

**LYNCHBURG CITY COUNCIL
PHYSICAL DEVELOPMENT COMMITTEE
MEETING HIGHLIGHTS
Tuesday, October 8, 2013
1:30 p.m.**

Attendees: Council Member Turner Perrow, Chair, Vice Mayor Ceasor Johnson, Council Member Joan Foster, Mayor Michael Gillette, ex-officio

Staff Present: Kimball Payne, Bonnie Svrcek, Gaynelle Hart, Kent White, Kevin Henry, Tim Mitchell, Lee Newland, Don DeBerry, Starlette Early

Others Present: Thomas & Margaret McCann (Manton Drive Property owners), Leslie Hoglund (Community Gardens), Norman Walton (Perkins & Orrison), Phil Lynch (Bojangles'), Alicia Petska (News & Advance)

Contract Awards:

There were no recent or pending contract awards to report for this month.

Update on Priority Projects:

Mr. Newland reported he had removed several projects from the report that were recently completed and added a few new projects including the Miller Center renovations at Parks and Recreation.

Council Member Perrow asked for an update on the Midtown Connector. Mr. Newland indicated the Midtown Connector was back under construction as of late yesterday and is moving forward with prior issues resolved. Park Avenue/Fort Avenue/Kemper intersection is on schedule to be re-opened by end of November.

As a newly appointed member of the PDC, Council Member Foster asked for clarification regarding the types of projects that are included in the "priority" report. Mr. Newland stated the projects listed are large projects going on in the City covered under the General Fund.

General Business:

- a. Vacate Unopened Right-of-Way Between 3600 and 3607 Manton Drive – Mr. Thomas P. McCann is petitioning to vacate a right of way between 3600 Manton Drive and 3607 Manton Drive. The right of way is 240 feet in length and 50 feet wide. There are unique circumstances involving this right of way. First, in the case of Donald A. Miner v. City of Lynchburg (March 4, 1963), the Supreme Court of Virginia ruled the City is not allowed to use this property for right of way. Also, although right of way vacations in the City typically result in adjoining property owners splitting the vacated property, this particular right of way was created after the subdivision out of the property at 3600 Manton Drive. As such the entire area would revert back to 3600 Manton Drive which is currently owned by the petitioner. There is no expected impact with the proposed vacation given the City cannot use the property as right of way and there are residential dwellings blocking access to Willow Lawn Drive.

Mr. Henry summarized the petition, noting in particular the City is not allowed to use the property for right-of-way as determined in a 1963 Supreme Court of Virginia ruling. He clarified the next steps, if

supported by the PDC, would be to go to a Public Hearing and before City Council in January. He also explained this is a procedural process of dealing with a dedicated right-of-way by the developer.

Council Member Turner disclosed the applicants were his neighbors; however, they had not discussed their petition with him prior to this meeting. Mayor Gillette and Council Member Foster were both supportive of vacating the property. With a consensus for PDC's recommendation to vacate the property, Council Member Turner indicated this should move forward to City Council and a Public Hearing.

- b. Community Gardens Water Fee Waiver -- The Lynchburg Area Food Council desires to have a water service installed at 904 Cabell Street in the Daniels Hill neighborhood to a property owned by Lynchburg Grows. The purpose of which is to supply water to meet the needs of a community garden. The connection fee covers the cost of the actual water service installation and therefore staff recommends that it not be waived. Similar requests from other non-profit organizations have been denied in the past due to the precedent of the water rate payers subsidizing these installations. This property previously had a water service and therefore will not be charged an availability fee.

Mr. Mitchell stated the recommendation from City staff was to not waive the connection fee for this property. He indicated the fee covers their cost of installing the water service and if waived, the cost will be passed along to other rate payers. He also explained that other non-profits have made similar requests in the past and have not had their fees waived.

Ms. Hoglund, of the Lynchburg Area Food Council (LAFC), described how overcoming food deserts requires a comprehensive approach, and the LAFC felt developing and supporting community gardens was one aspect of this approach. Daniel's Hill Community Garden is scheduled to be re-dedicated on October 26th and the development of this garden has been a community-wide effort. It is being gardened by a wide range of people (young and old) living in the community and is already enhancing the quality of life for those along Cabell Street. The concept of putting in "sweat equity" and gleaning from what is produced is providing access to healthy affordable food for the people within this community.

Water is obviously essential to the success of this community garden. Currently the water supply is managed by the "Gallon Water Brigade"-- neighbors who are donating and filling gallon jugs of water and hauling them to the site of the garden. This process requires much time and effort, so LAFC is requesting assistance in the form of a waiver for the water connection fee. Ms. Hoglund indicated an agreement from the city to waive the fee would demonstrate the City's commitment to resolving the problem of food deserts. She cited examples of public/private partnerships in other cities designed specifically for this purpose and noted waivers would only be requested for this garden and a maximum of 5 others throughout the City's census tracts identified by the USDA as food deserts. LAFC is providing start-up funds for each of these gardens and hopes the City will provide support to the effort in the form of water connection waivers.

Council Member Foster indicated she viewed the request as reasonable and felt Council needed to review similar public/private models to tackle a problem within the community. She referenced the City's sustainable community initiatives (i.e. Healthy and Active Living) that are attempting to address such critical issues as food deserts. Council Member Foster supports researching models in other cities that might meet the needs of this program, and determining how the community can work together to help support access to healthy affordable food. Ms. Hoglund confirmed there were many models and

also offered the American Community Garden Association as a resource for standards, policies, and ideas that can be defined and adopted by localities as appropriate.

Vice-Mayor Johnson asked for clarification on who would be paying the on-going water bill (Lynchburg Grows is owner of property and would be responsible for payment) and who was maintaining the gardens (neighbors in Daniel's Hill). He expressed support of a connection fee waiver in some fashion based on research of models in use by other cities.

Mr. Mitchell inquired which fund would absorb the cost of the water service installation should PDC's recommendation be to grant a fee waiver. Mayor Gillette felt it was easy to identify an interest by the City to support the effort; however, since this waiver represented a fee, or defined cost, it would most likely need to go before full Council and receive a super-majority vote. Discussions regarding gifts to non-profits and the procedures required by the City to handle donations above a \$1,000 level were addressed, and Mr. Payne indicated it may need to receive attention by the City Attorney. Additional funding avenues were mentioned for consideration, including whether CDBG funds might be a potential source.

Council Member Perrow indicated he was in support of the mission; however, noted that Mr. Mitchell was tasked by City Council to run an enterprise fund—a fund that is completely self-sufficient deriving revenues completely from fee-for-services. He felt a General Fund appropriation was the most logical source for funding this effort if a waiver was granted. He commended the contributions of LAFC to Lynchburg's neighborhoods. He also noted there were many other non-profit organizations that were doing similar good work in the City's neighborhoods and if the City started waiving fees for all of these, it opened the possibility for doing more and would set a bad precedence.

Council Member Perrow inquired about other requirements for this connection (i.e. back-flow preventer) because this is an irrigation system. Mr. Mitchell indicated City staff was working with the Health Department and explained the International Planning Code had special requirements for this type of high-hazard connection.

While not wanting to grant a fee waiver, the committee was in support of exploring options for funding this effort. Council Member Foster wanted City staff to research information that would give Council direction on 1) whether this and the other 5 proposed gardens are eligible for CDBG funding, and 2) what are some of the models being used by other localities/cities. Mayor Gillette felt the most plausible option was to dedicate funds (ex. CDBG, General Funds, etc.) to support the effort rather than approve a fee waiver. Action from PDC is to defer this issue to full Council for consideration once City staff has additional information as requested by Council Member Foster.

- c. Right-of-Way Vacation – Old Forest Road between Dandridge Drive & Ardmore Drive -- GOBO Properties, LLC is petitioning to vacate excess right-of-way and add it to the adjoining parcels along Old Forest Road. This land was included in the rezoning in April, as there has been confusion amongst the property owners as to who the area belongs to. The City Attorney's office has determined that it is indeed Public Right of Way and the City is retaining enough of the area for the traffic control equipment to be located on.

Mr. Newland provided background information regarding the request to vacate the excess portion of the City's right-of-way at this location. At the time Walmart was constructed, the City installed traffic control equipment on this public right-of-way. Following a rezoning to allow construction of a Bojangles, a site plan submitted by Perkins & Orrison Inc. questioned the ownership of the entire right-of-way. Property owners along Old Forest Road, believing they maintained an ownership in this right-of-way,

have worked with GOBO on a sale of this property to allow for the construction needs of Bojangles'. The City Attorney decided the most prudent action was to have the City vacate its interest in the excess portion of the right-of-way (keeping enough land to allow maintenance of traffic control equipment) so that the additional portion can revert back to the property owners.

Council Member Perrow clarified that the actual ownership of the property was not in the purview to PDC's recommendation on this issue. PDC is considering only the City's interest in the right-of-way and making a recommendation regarding whether the City should or should not vacate the excess portion of the right-of-way.

Mayor Gillette inquired about the claim of ownership and commented the City would relinquish actual land with a decision to vacate the right-of-way. Mr. Payne reflected it was not definite whether the City really has an ownership in the property. Mr. Walton presented a brief summary of research conducted by Perkins & Orrison Inc. He indicated the City's GIS system's tax and property maps support ownership by Earl Driskill, Inc. However a plat later created by Dewberry and Davis, for the purpose of Walmart's construction and making road improvements along Old Forest Road, indicates it is a public right-of-way. Additional research with deeds and plats located at the Clerk of Courts in both the City of Lynchburg and Campbell County (property was annexed by the City in 1978) made determining actual ownership still ambiguous.

Ms. Foster questioned whether property taxes had been paid by those claiming to be property owners. Mr. Lynch (Bojangles') indicated he believes they have acted in good faith as property owners, having represented this property as their own with intent to convey to Bojangles' for development.

Council Member Perrow indicated the City only needed to protect the interest of the infrastructure located in the right-of-way. There was consensus to move this item forward to full Council for consideration with PDC's recommendation to vacate the excess right-of-way.

- d. Transportation Alternatives Application (TAP) for Sidewalk in Lynchpin Industrial Park – There has been numerous requests for sidewalk access to Ivy Creek Park off Jefferson Ridge Parkway. This application requests 80% federal reimbursement through the Transportation Alternatives Program to construct this sidewalk. Design is under way and should be complete prior to receiving the funding authorization next October.

Mr. DeBerry summarized the request, indicating the funding would provide 80 percent reimbursement, with an estimated cost for the full project of \$200,000. He noted this would need to go before full Council on November 12th, with the grant application being submitted on November 1 to VDOT.

Mayor Gillette supported the idea, noting the price seemed relatively low for the length of sidewalk. He inquired about the funding source for the \$40,000 match and Mr. DeBerry indicated he was in conversation with Economic Development. A public meeting is scheduled for October 16th and a recommendation would be proposed when brought before Council in November.

Council Member Perrow discussed the City's policy of owner participation in construction of sidewalks and inquired whether the property owners were prepared to absorb 50% of the City's cost (50% of \$40,000). He was more supportive of the proposal with a cost of only \$20,000. There was further discussion of sidewalk location and connections with existing paths and entrances to Ivy Creek Park.

Council Member Foster commented this was all part of Healthy, Active and Safe living and supported the sidewalks for the park. The committee inquired whether this funding could support sidewalk

construction in other areas of the City. Mr. DeBerry indicated the funding could be used in other areas and explained the application and grant approval process. Council Member Perrow stated this funding request should go before full Council for consideration, following grant application and consultation with Finance Committee for funding options.

Roll Call:

Ms. Svrcek indicated staff's response to using CDBG funds for a water connection related to a Community Garden at 904 Cabell Street was prohibited due to private ownership of the property. There was further discussion regarding the location of the water connection meter on public property right-of-way and the possible impact this might have on funding options. Other community gardens would be located on public property.

Next meeting: November 12, 2013